

Special Appeal (Writ) No.527/2005
(in Civil Writ Pet. No.4092/91)
State of Rajasthan ***Versus***
Surajnarain Kumawar & Ors.

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Date of Judgment ::: 23/08/06

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Hon'ble the Chief Justice Shri S.N.Jha
Hon'ble Mr. Justice Ajay Rastogi

Shri G.S.Gill, Addl.Adv.Gen., for the State appellant
Shri Ashok Gaur, for respondent.

(Per Ajay Rastogi, J.) (Oral)

Instant special appeal has been filed by State of Rajasthan against order dt.03/03/04 of learned Single Judge whereby appellant has been directed to include name of writ petitioner in seniority list of Tracer as assigned to him in terms of order dt.17/12/98 and has been called upon to pass necessary orders in compliance whereof.

Case set up by writ petitioner before learned Single Judge is that he was initially kept as Apprentice for three years on contract basis from 05/10/79 to 04/12/82 under the Apprentice Act, 1961 in the Department of Town planning and on successful completion of contract period as Apprentice and being qualified to the post of Tracer, was initially appointed on urgent/temporary basis vide order dt.23/02/83 (Ann.2) and since then has been continuously working as Tracer.

A provisional seniority list (Ann.4) of Tracers who had joined on 08/03/83 was published by the Department of Town planning on 13/06/89 and against which writ petitioner raised his objections but final seniority list (Ann.6) of Tracers even

including of persons selected against quota of 1985-86 was published in December, 1990, against which also, he raised objections vide representation dt.22/12/90 (Ann.7). Despite his objections, his claim was ignored while publication of final seniority list, hence writ petitioner filed CWP No.4092/91 seeking direction for inclusion of his name in seniority list while treating him to be substantively appointed on the post of Tracer.

Pendente writ petition, seniority list (Ann.9) of Tracer was provisionally published on 20/11/98 showing name of writ petitioner at S.No.69 with his date of joining as 05/03/83 and so also his colleagues at S.No.66 & 67 who too were appointed along with him in the same manner at the time of initial appointment and it was made final vide seniority list dt.17/12/98 showing name of writ petitioner at S.No.66.

It seems that persons affected by inclusion of name of writ petitioner against publication of final seniority list dt.17/12/98 (Ann.10) raised objections and his name was omitted from final seniority list dt.17/12/98 vide order dt.26/04/99 (Ann.11) wherein a Note was appended that since Surajnarain Kumawat in respect of his seniority has filed CWP No.4092/91 hence final seniority list is revisable in accordance with judgment of this Court.

Appellants filed reply to writ petition and has basically raised objections inter alia that appointment of writ petitioner was not made after undergoing regular process of selection as provided under service Rules and since he has not been

confirmed in the cadre of Tracer, hence is not entitled for inclusion of his name in seniority list of Tracers who were working substantively in the Department and only by an error at one point of time in December, 1998 his name was included in seniority list but immediately on objection raised by persons affected, his name was omitted and a specific Note was appended therein that seniority list is revisable subject to final decision of CWP No.4092/91.

Learned Single Judge observed that since name of writ petitioner was included in final seniority list dt.17/12/98 and no reason has come forward from the appellant for omitting his name from revised seniority list published vide order dt. 26/04/99 (Ann.11) and accordingly directed the appellant to include his name in seniority as assigned to him in terms of order dt.17/12/98 (Ann.10). Hence this appeal.

Counsel for appellant submits that since writ petitioner was not regularly appointed on the post of Tracer in accordance with procedure under service Rules; as such no substantive right has accrued to him and merely because he has been working for sufficient long time, will not give him any right to get his name included in seniority list which contained only of such persons working in substantive capacity in the cadre of Tracer and it was only by an error, his name was once included in seniority list dt.17/12/98, which was rectified immediately upon objections raised by affected persons and as such was revised vide subsequent order dt.26/04/99 whereby his name was omitted with a specific note appended

therein subject to final decision of writ petition filed by writ petitioner. Counsel further submits that since writ petitioner has not been confirmed as yet, no right is otherwise conferred in his favour seeking inclusion of his name in seniority list of Tracers.

Counsel for the respondent-writ petitioner who entered into a caveat, on the other hand, supported the finding recorded by learned Single Judge under order impugned and submits that respondent has rendered 23 years' service by now and appellants are unreasonable while still taking stand that he was not confirmed and not holding post of Tracer in substantive capacity, as such he has no right to seek inclusion of his name in seniority list.

We have considered contentions of Counsel for the parties and with their assistance examined material on record. However, this fact remains undisputed that writ petitioner has not yet been confirmed on the post of Tracer held by him. Reasons for non-confirmation of writ petitioner as submitted by Counsel for appellant that since writ petitioner has not been substantively appointed after due process of selection in accordance with service Rules, he could not be considered for confirmation. Be that as it may, this fact remains undisputed that writ petitioner is working in the Department of Town planning for last more than 23 years holding the post of Tracer. An urgent temporary/ad hoc appointment under service Rules can be made for six months which can be further extended for six months more. But in

instant case, it is not the case of appellant that there is any break in service of writ petitioner or that they took any adverse decision against him and his continuation in service is because of intervention of this Court. In our considered opinion, once an appointee has been allowed to continue for sufficient long time, argument on behalf of the appellant does not countenance to still treat him as an urgent/temporary appointee and as a result whereof dis-entitling him from benefit of service either for his confirmation or seniority on the post of Tracer, which he has been holding admittedly for last more than 23 years. We do not find any illegality in the impugned order of learned Single Judge directing the appellant to issue necessary orders with regard to his placement in seniority list in terms of order dt.17/12/98.

However, we make it clear that issuance of order by the appellant in compliance of order dt. 03/03/04 passed by learned Single Judge, if at all affects right of members of the service who are holding post of Tracer and are aggrieved thereby, they will be free to avail remedy available under the law and what has been observed herein will not come in their way in assailing consequential order passed in compliance of order of this Court.

With these observations, this special appeal fails and is hereby dismissed summarily.

(Ajay Rastogi), J.

(S.N.Jha), CJ.